



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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March 14, 2015

Terrance D. Swann
Westville Correctional Facility
5501 South 1100 West
Westville, IN 46391

*Re: Formal Complaint 15-FC-61 & 62 (Consolidated); Alleged Violation of the
Access to Public Records Act by the Marion County Clerk and the Marion County Jail*

Dear Mr. Swann,

This advisory opinion is in response to your formal complaint(s) alleging the Marion County Clerk ("Clerk") and Marion County Jail ("MCJ") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk responded to your complaint on March 6, 2015 via Ms. Samantha DeWester, Esq., City Prosecutor/Public Access Counselor. MCJ responded to your complaint on February 25, 2015 via Ms. Rachel Gohmann of the Marion County Sheriff's Office ("MCSO"). Their responses are enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaints received by the Office of the Public Access Counselor on February 17, 2015.

BACKGROUND

Your complaint(s) dated February 10, 2015 alleges the Marion County Clerk and Marion County Jail Records (MCJR) violated the Access to Public Records Act by failing to respond to your public access request.

On or about January 27, 2015, you submitted a public records request to the Clerk and (MCJR), requesting documentation specific to a cause number. You contend to have not received a response.

On March 5, 2015, the City of Indianapolis, on behalf of the Marion County Clerk, responded to the Indiana Public Access Counselor. Counsel contends your request was not acknowledged because it was not received by the Clerk. Counsel also notes the clerk does not possess inmate records and would not have records responsive to your request.

MCJR also contends to not have received your request. Further, MCJR notes that since the JUSTIS Information System, which previously provided access to requested records, is no longer in operation. Therefore, neither the County Jail Records, nor the County Sheriff has the records you requested.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. Marion County Clerk is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy Clerk’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The APRA requires that a request for inspection or copying identify “with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a). “Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998).

The City of Indianapolis responded on behalf of the Clerk. The City and the Clerk do not have any records responsive to your request, as it is not a keeper of the type of records you seek. Furthermore, the Clerk alleges it did not receive your request for records. Unfortunately, this is a fairly common casualty of the logistics associated with Department of Correction mail system, similar to the Marion County Jail.

As for the jail records you seek, the MCSO and the jail allege they no longer have access to the information you seek. I am unfamiliar with the current operating system for retaining those records; however, if the MCSO or the Marion County Jail were at one time custodians of those records, they are subject to a retention schedule. I am copying the Sheriff’s Office on this opinion and it is my sincere hope they advise you which public agency may have these records and how they might be obtained.

CONCLUSION

For the foregoing reasons, it the Opinion of the Public Access Counselor the Marion County Clerk did not violate the Access to Public Records Act. I encourage the Marion County Sheriff’s Department to advise you as soon as possible where these records might be housed.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Samantha E. DeWester, Esq.
Rachel Gohmann